

Introduced by Senator Huff

February 25, 2015

An act to amend Sections 241 and 243 of the Penal Code, relating to assault and battery.

LEGISLATIVE COUNSEL'S DIGEST

SB 391, as introduced, Huff. Assault and battery: transit employees.

(1) Existing law defines an assault as an unlawful attempt, coupled with present ability, to commit a violent injury on the person of another. Under existing law, an assault committed against specified individuals, such as a peace officer or a lifeguard, is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment.

This bill would also make an assault committed against a transit employee punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law defines a battery as any willful and unlawful use of force or violence upon the person of another. Under existing law a battery committed against specified individuals, such as a peace officer or a lifeguard, is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. Under existing law, if an injury is inflicted the battery is punishable by imprisonment in a county jail not exceeding one year, by a fine of \$2,000, or by both that fine and imprisonment, or by imprisonment in a county jail for 16 months, or 2 or 3 years.

This bill would also make a battery committed against a transit employee punishable by imprisonment in a county jail not exceeding

one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. The bill would, if the battery results in an injury, make the battery punishable by imprisonment in a county jail not exceeding one year, by a fine of \$2,000, or by both that fine and imprisonment, or by imprisonment in a county jail for 16 months, or 2 or 3 years. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 241 of the Penal Code is amended to
2 read:

3 241. (a) An assault is punishable by a fine not exceeding one
4 thousand dollars (\$1,000), or by imprisonment in the county jail
5 not exceeding six months, or by both the fine and imprisonment.

6 (b) When an assault is committed against the person of a parking
7 control officer engaged in the performance of his or her duties,
8 and the person committing the offense knows or reasonably should
9 know that the victim is a parking control officer, the assault is
10 punishable by a fine not exceeding two thousand dollars (\$2,000),
11 or by imprisonment in the county jail not exceeding six months,
12 or by both the fine and imprisonment.

13 (c) When an assault is committed against the person of a peace
14 officer, firefighter, emergency medical technician, mobile intensive
15 care paramedic, lifeguard, process server, traffic officer, code
16 enforcement officer, animal control officer, or search and rescue
17 member engaged in the performance of his or her duties, or a
18 physician or nurse engaged in rendering emergency medical care
19 outside a hospital, clinic, or other health care facility, *or a transit*
20 *employee*, and the person committing the offense knows or
21 reasonably should know that the victim is a peace officer,
22 firefighter, emergency medical technician, mobile intensive care
23 paramedic, lifeguard, process server, traffic officer, code

1 enforcement officer, animal control officer, or search and rescue
2 member engaged in the performance of his or her duties, or a
3 physician or nurse engaged in rendering emergency medical care,
4 *or a transit employee*, the assault is punishable by a fine not
5 exceeding two thousand dollars (\$2,000), or by imprisonment in
6 a county jail not exceeding one year, or by both the fine and
7 imprisonment.

8 (d) As used in this section, the following definitions apply:

9 (1) Peace officer means any person defined in Chapter 4.5
10 (commencing with Section 830) of Title 3 of Part 2.

11 (2) “Emergency medical technician” means a person possessing
12 a valid course completion certificate from a program approved by
13 the State Department of Health Care Services for the medical
14 training and education of ambulance personnel, and who meets
15 the standards of Division 2.5 (commencing with Section 1797) of
16 the Health and Safety Code.

17 (3) “Mobile intensive care paramedic” refers to those persons
18 who meet the standards set forth in Division 2.5 (commencing
19 with Section 1797) of the Health and Safety Code.

20 (4) “Nurse” means a person who meets the standards of Division
21 2.5 (commencing with Section 1797) of the Health and Safety
22 Code.

23 (5) “Lifeguard” means a person who is:

24 (A) Employed as a lifeguard by the state, a county, or a city,
25 and is designated by local ordinance as a public officer who has a
26 duty and responsibility to enforce local ordinances and
27 misdemeanors through the issuance of citations.

28 (B) Wearing distinctive clothing which includes written
29 identification of the person’s status as a lifeguard and which clearly
30 identifies the employing organization.

31 (6) “Process server” means any person who meets the standards
32 or is expressly exempt from the standards set forth in Section 22350
33 of the Business and Professions Code.

34 (7) “Traffic officer” means any person employed by a county
35 or city to monitor and enforce state laws and local ordinances
36 relating to parking and the operation of vehicles.

37 (8) “Animal control officer” means any person employed by a
38 county or city for purposes of enforcing animal control laws or
39 regulations.

(9) (A) “Code enforcement officer” means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, that has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) “Code enforcement officer” also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(10) “Parking control officer” means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking.

(11) “Search and rescue member” means any person who is part of an organized search and rescue team managed by a governmental agency.

(12) “*Transit employee*” means any employee of an operator as defined in Section 99210 of the Public Utilities Code.

SEC. 2. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search

1 and rescue member engaged in the performance of his or her duties,
 2 whether on or off duty, including when the peace officer is in a
 3 police uniform and is concurrently performing the duties required
 4 of him or her as a peace officer while also employed in a private
 5 capacity as a part-time or casual private security guard or
 6 patrolman, or a nonsworn employee of a probation department
 7 engaged in the performance of his or her duties, whether on or off
 8 duty, or a physician or nurse engaged in rendering emergency
 9 medical care outside a hospital, clinic, or other health care facility,
 10 *or a transit employee*, and the person committing the offense knows
 11 or reasonably should know that the victim is a peace officer,
 12 custodial officer, firefighter, emergency medical technician,
 13 lifeguard, security officer, custody assistant, process server, traffic
 14 officer, code enforcement officer, animal control officer, or search
 15 and rescue member engaged in the performance of his or her duties,
 16 nonsworn employee of a probation department, or a physician or
 17 nurse engaged in rendering emergency medical care, *or a transit*
 18 *employee*, the battery is punishable by a fine not exceeding two
 19 thousand dollars (\$2,000), or by imprisonment in a county jail not
 20 exceeding one year, or by both that fine and imprisonment.

21 (c) (1) When a battery is committed against a custodial officer,
 22 firefighter, emergency medical technician, lifeguard, process server,
 23 traffic officer, or animal control officer engaged in the performance
 24 of his or her duties, whether on or off duty, or a nonsworn
 25 employee of a probation department engaged in the performance
 26 of his or her duties, whether on or off duty, or a physician or nurse
 27 engaged in rendering emergency medical care outside a hospital,
 28 clinic, or other health care facility, *or a transit employee*, and the
 29 person committing the offense knows or reasonably should know
 30 that the victim is a nonsworn employee of a probation department,
 31 custodial officer, firefighter, emergency medical technician,
 32 lifeguard, process server, traffic officer, or animal control officer
 33 engaged in the performance of his or her duties, or a physician or
 34 nurse engaged in rendering emergency medical care, *or a transit*
 35 *employee*, and an injury is inflicted on that victim, the battery is
 36 punishable by a fine of not more than two thousand dollars
 37 (\$2,000), by imprisonment in a county jail not exceeding one year,
 38 or by both that fine and imprisonment, or by imprisonment pursuant
 39 to subdivision (h) of Section 1170 for 16 months, or two or three
 40 years.

1 (2) When the battery specified in paragraph (1) is committed
2 against a peace officer engaged in the performance of his or her
3 duties, whether on or off duty, including when the peace officer
4 is in a police uniform and is concurrently performing the duties
5 required of him or her as a peace officer while also employed in
6 a private capacity as a part-time or casual private security guard
7 or patrolman and the person committing the offense knows or
8 reasonably should know that the victim is a peace officer engaged
9 in the performance of his or her duties, the battery is punishable
10 by a fine of not more than ten thousand dollars (\$10,000), or by
11 imprisonment in a county jail not exceeding one year or pursuant
12 to subdivision (h) of Section 1170 for 16 months, or two or three
13 years, or by both that fine and imprisonment.

14 (d) When a battery is committed against any person and serious
15 bodily injury is inflicted on the person, the battery is punishable
16 by imprisonment in a county jail not exceeding one year or
17 imprisonment pursuant to subdivision (h) of Section 1170 for two,
18 three, or four years.

19 (e) (1) When a battery is committed against a spouse, a person
20 with whom the defendant is cohabiting, a person who is the parent
21 of the defendant's child, former spouse, fiancé, or fiancée, or a
22 person with whom the defendant currently has, or has previously
23 had, a dating or engagement relationship, the battery is punishable
24 by a fine not exceeding two thousand dollars (\$2,000), or by
25 imprisonment in a county jail for a period of not more than one
26 year, or by both that fine and imprisonment. If probation is granted,
27 or the execution or imposition of the sentence is suspended, it shall
28 be a condition thereof that the defendant participate in, for no less
29 than one year, and successfully complete, a batterer's treatment
30 program, as described in Section 1203.097, or if none is available,
31 another appropriate counseling program designated by the court.
32 However, this provision shall not be construed as requiring a city,
33 a county, or a city and county to provide a new program or higher
34 level of service as contemplated by Section 6 of Article XIII B of
35 the California Constitution.

36 (2) Upon conviction of a violation of this subdivision, if
37 probation is granted, the conditions of probation may include, in
38 lieu of a fine, one or both of the following requirements:

39 (A) That the defendant make payments to a battered women's
40 shelter, up to a maximum of five thousand dollars (\$5,000).

1 (B) That the defendant reimburse the victim for reasonable costs
2 of counseling and other reasonable expenses that the court finds
3 are the direct result of the defendant's offense.

4 For any order to pay a fine, make payments to a battered
5 women's shelter, or pay restitution as a condition of probation
6 under this subdivision, the court shall make a determination of the
7 defendant's ability to pay. In no event shall any order to make
8 payments to a battered women's shelter be made if it would impair
9 the ability of the defendant to pay direct restitution to the victim
10 or court-ordered child support. If the injury to a married person is
11 caused in whole or in part by the criminal acts of his or her spouse
12 in violation of this section, the community property shall not be
13 used to discharge the liability of the offending spouse for restitution
14 to the injured spouse, required by Section 1203.04, as operative
15 on or before August 2, 1995, or Section 1202.4, or to a shelter for
16 costs with regard to the injured spouse and dependents, required
17 by this section, until all separate property of the offending spouse
18 is exhausted.

19 (3) Upon conviction of a violation of this subdivision, if
20 probation is granted or the execution or imposition of the sentence
21 is suspended and the person has been previously convicted of a
22 violation of this subdivision and sentenced under paragraph (1),
23 the person shall be imprisoned for not less than 48 hours in addition
24 to the conditions in paragraph (1). However, the court, upon a
25 showing of good cause, may elect not to impose the mandatory
26 minimum imprisonment as required by this subdivision and may,
27 under these circumstances, grant probation or order the suspension
28 of the execution or imposition of the sentence.

29 (4) The Legislature finds and declares that these specified crimes
30 merit special consideration when imposing a sentence so as to
31 display society's condemnation for these crimes of violence upon
32 victims with whom a close relationship has been formed.

33 (5) If a peace officer makes an arrest for a violation of paragraph
34 ~~(1) of subdivision (c) of this section, (1)~~, the peace officer is not
35 required to inform the victim of his or her right to make a citizen's
36 arrest pursuant to subdivision (b) of Section 836.

37 (f) As used in this section:

38 (1) "Peace officer" means any person defined in Chapter 4.5
39 (commencing with Section 830) of Title 3 of Part 2.

1 (2) “Emergency medical technician” means a person who is
2 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses
3 a valid certificate or license in accordance with the standards of
4 Division 2.5 (commencing with Section 1797) of the Health and
5 Safety Code.

6 (3) “Nurse” means a person who meets the standards of Division
7 2.5 (commencing with Section 1797) of the Health and Safety
8 Code.

9 (4) “Serious bodily injury” means a serious impairment of
10 physical condition, including, but not limited to, the following:
11 loss of consciousness; concussion; bone fracture; protracted loss
12 or impairment of function of any bodily member or organ; a wound
13 requiring extensive suturing; and serious disfigurement.

14 (5) “Injury” means any physical injury which requires
15 professional medical treatment.

16 (6) “Custodial officer” means any person who has the
17 responsibilities and duties described in Section 831 and who is
18 employed by a law enforcement agency of any city or county or
19 who performs those duties as a volunteer.

20 (7) “Lifeguard” means a person defined in paragraph (5) of
21 subdivision (d) of Section 241.

22 (8) “Traffic officer” means any person employed by a city,
23 county, or city and county to monitor and enforce state laws and
24 local ordinances relating to parking and the operation of vehicles.

25 (9) “Animal control officer” means any person employed by a
26 city, county, or city and county for purposes of enforcing animal
27 control laws or regulations.

28 (10) “Dating relationship” means frequent, intimate associations
29 primarily characterized by the expectation of affectional or sexual
30 involvement independent of financial considerations.

31 (11) (A) “Code enforcement officer” means any person who
32 is not described in Chapter 4.5 (commencing with Section 830) of
33 Title 3 of Part 2 and who is employed by any governmental
34 subdivision, public or quasi-public corporation, public agency,
35 public service corporation, any town, city, county, or municipal
36 corporation, whether incorporated or chartered, who has
37 enforcement authority for health, safety, and welfare requirements,
38 and whose duties include enforcement of any statute, rules,
39 regulations, or standards, and who is authorized to issue citations,
40 or file formal complaints.

(B) “Code enforcement officer” also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(12) “Custody assistant” means any person who has the responsibilities and duties described in Section 831.7 and who is employed by a law enforcement agency of any city, county, or city and county.

(13) “Search and rescue member” means any person who is part of an organized search and rescue team managed by a government agency.

(14) “Security officer” means any person who has the responsibilities and duties described in Section 831.4 and who is employed by a law enforcement agency of any city, county, or city and county.

(15) *“Transit employee” means any employee of an operator as defined in Section 99210 of the Public Utilities Code.*

(g) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as *People v. Corey*, 21-Cal.3d Cal.3d 738, and *Cervantez v. J.C. Penney Co.*, 24-Cal.3d Cal.3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O